Service Date: March 29, 1975

DEPARTMENT OF PUBLIC SERVICE REGULATION

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the application of PACIFIC POWER & LIGHT, CO., for authority to establish increased rates for electric service.	)	UTILITY DIVISION DOCKET NO. 6289 ORDER NO. 4243

ORDER APPROVING PART OF REQUESTED
ELECTRIC RATE INCREASES

APPEARANCES

FOR THE APPLICANT:

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FOR THE PROTESTANTS:

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FOR THE COMMISSION:

Russell L. Doty, Jr., Counsel

PUBLIC WITNESSES:

MR. & MRS. PAT N. CARTER, 422 Spokane Avenue, Whitefish, MT.

MS. SUSAN BEVZ, Western Montana Agency on Aging

EVELYN STENSLIE, Montana Vacations, Inc., Whitefish, MT.

HAROLD McLAUGHLIN, 759 North Main St., Kalispell, MT 59901

BEFORE:

GORDON E. BOLLINGER, Chairman
P. J. GILFEATHER, Commissioner
THOMAS G. MONAHAN, Commissioner
JAMES R. SHEA, Commissioner
GEORGE TURMAN, Commissioner

After duly considering the record before this Commission, including the testimony and evidence, oral and written, the Commission now makes the following evidentiary rulings, findings of fact, conclusions of law and order:

EVIDENTIARY RULINGS

1. All rulings on objections to evidence and motions made at the hearing, and contained in the transcript, are incorporated herein by reference.

2. Any objections to evidence or motions not previously ruled upon are denied.

FINDING OF FACT

1. Pacific Power & Light Company (Applicant) is a public utility furnishing electric service in the state of Montana subject to the jurisdiction and authority of this Commission.

2. On July 10, 1974, Applicant filed an application to increase its rates for electric service in Montana. On February 7, 1975, Applicant filed an application to increase its rates for

electric service in Montana. On February 7, 1975, Applicant filed proposed testimony and exhibits, based on a 12-month test year ending September 30, 1974, in support of the new rates and charges.

3. Public notice of this hearing was given by means of legal publication in the May 15, 1975, Western News, a Libby, Montana weekly newspaper, the May 15, 1975, Daily Inter Lake, a Kalispell, Montana daily newspaper, and the May 15, 1975, Hungry Horse News, a Columbia Falls, Montana weekly newspaper.

Public notice for changes in dates for this hearing from July 18 to July 16, 17, and 18 was given by means of legal publication in the June 19, 1975, Western News, the Daily Inter Lake, and the Hungry Horse News.

No objection was interposed in these proceedings regarding the scope or substance of notice.

4. Hearings to receive Applicant's direct evidence were held on June 4 & 5, 1975, in Helena, Montana. The hearings to allow clarification and receipt of public testimony were held on July 16 & 17, 1975, in Kalispell, Montana.

5. Applicant's proposed test year, using actual data for the period September 30, 1973, to September 30, 1974, inclusive, is reasonable and is accepted.

6. The present value of Applicant's electric property situated and allocated to Montana, based on an original cost-depreciated rate base, actually used and useful for the convenience of the public, is $25,318,000 for the test year.

7. Applicant's actual operating revenues from Montana electric customers and as assigned and allocated to Montana during the test year were $5,369,000.

8. Applicant's proposed adjustments reducing test year operating revenues by $328,000 are accepted except for the $102,000 revenue decrease associated with the 30-year water study. Thus, the Public Service Commission finds Applicant's net operating revenues to be $5,143 000.

9. Applicant's actual operating revenue deductions directly incurred and as assigned and allocated to its Montana electric operations during the test year were $4,116,000. The advertising expenses included in the above figure meet the statutory requirements of Senate Bill No. 108.

10. Applicant's proposed adjustments increasing test year operating revenue deductions by $173,000 are accepted except for the $25,000 expense increase associated with the 30-year water study. Thus, the Public Service Commission finds Applicant's operating revenue deductions to be $4,264,000.

11. The 30-year water study relied upon by Applicant is 17 years old and covers all of the utilities on the Columbia River system generating hydro-electric power. It is not confined to or indicative of the Applicant's true experiences in that respect.

12. Applicant's net operating revenues during the test year were $879,000 under existing rate schedules.

13. The net operating revenues under present rate schedules produced a rate of return of 3.47 percent on Applicant's original cost depreciated rate base.

14. The existing schedule of rates and charges will not provide Applicant with a fair return on the value of its electric properties devoted to its Montana electric customers based on the test year.

15. Applicant's capital structure on September 30, 1974, consisted of the following: Long-term debt--$632,279,000; Preferred Stock $117,236,000; Common Stock--$430,288,000; and Deferred Income Tax $39,322,000. Utilizing an embedded cost of debt of 5.84 percent for long term debt, 7.17 percent for preferred stock, 11.25 percent for common; stock and "0" percent for deferred income tax, an adequate, reasonable fair and equitable rate of return would be 7.69 percent return on an original cost depreciated rate base.

16. The present rates must be increased to provide Applicant with an opportunity to earn a reasonable return on the value of its Montana electric properties for the test year.

17. Net operating revenues of $1,947,000 are required to provide a return of 7.69 percent on Applicant's test year original cost depreciated rate base of $25,318,000.

18. The rates proposed by Applicant will produce net operating revenues in excess of a fair and reasonable return on the value of Applicant's Montana electric properties for the test year. The allowed revenue increase in order to be fair and reasonable should be $1,068,000 instead of the $1,298,000 requested by Applicant.

19. Applicant has not provided justification to explain why it proposes to increase the end of tail-block rate (for large uses) a smaller monetary amount per Kwh than first block rate (for small users). The promotional rate, for the present residential usage between 300 and 850 Kwh of monthly consumption and the proposed residential-rate block between 250 and 850 Kwh, has not been justified by Applicant. No cost of service study or load study were provided by the Applicant to help the Commission determine proper allocations between customer classes.

20. Applicant's witness Davenport testified on cross examination that for each additional Kwh sold by the Company, regardless of time of day or season of the year, the average cost of all Kwh's sold increased. (TR. Part II, 281-289)

21. The proposed block rates tends to encourage large users of electricity to use more energy at a lower cost during a time when energy cost and shortages make such promotional price breaks irrational.

22. In view of the Findings of Fact 19-21, a decreasing block rate structure for increasing amounts of consumption is not justified, and its continuation would perpetuate invidious discrimination. A minimum customer charge coupled with a flat rate for all energy consumed more accurately reflects Applicant's actual cost experience. Such a flat rate structure for each customer class as is ordered below is in the public interest and is just, reasonable and equitable and it will promote energy conservation.

23. Rate Schedule 33 on controlled water hearings was a promotional schedule; has no justification as an interruptible schedule because interruptions have never been applied to the knowledge of Mr. Davenport; is not applied equally to classes of persons receiving the same

service, but only to older (not newer) customer classes and is, therefore, invidiously discriminatory, and unreasonable. (TR. Part II, 264-266)

24. All other proposed findings of fact have been adopted in form or substance except some of the other proposed findings which have been denied because they are covered by the reasons to be found in this order.

CONCLUSION OF LAW

1. In Georgia Power Co., 35 F.P.C. 436 (1963), affirmed sub nom., Georgia Power Co. v. F.P.C., 373 F.2d 485 (5th Cir. 1967), and Mississippi Power Co., 45 F.P.C. 269 (1971), the FPC considered so-called "dual rate" provisions which accorded lower rates for power to be resold by wholesale customers to small consumers than for power to be resold to large consumers. The FPC applied the test of (1) whether the services were comparable and (2) if they were, whether the utility could justify the rate difference on a cost of service basis. The FPC found that the services were comparable and no cost of service justification had been made, and it therefore disapproved the dual rates.

The block rates, and schedule 33 water heating rate proposed here by Applicant are for all practical purposes like the "dual rates" in the Georgia Power and Mississippi Power. The "block rates" are charged for services that are essentially comparable except for volume of usage. Schedule 33 rates are for cheaper service to a class of customers the utility has served for a longer period than its newer class of customers (which it charges at a higher rate for the same service).

In this era where leaders are trying to allocate scarce finite resources properly, it is not reasonable to allow persons who use more to pay less per unit of energy as their volume of use increases--especially if there is no economic justification for doing so. The tail-block rate structures traditionally proposed by utilities as "promotional" rate structures should now be abandoned because they do not promote the most efficient allocation of resources. No cost of service justification of the rate blocks or schedule 33 has been tendered by the Applicant in this case. In the absence of such justification, the declining "tail-block" rate schedule (as they use more, large users pay less per unit of energy used) as proposed by Applicant is irrational in light of the energy crisis and discriminates invidiously without demonstrated justification or a rational basis against a class of persons within a class of customers who use a small amount of energy and therefore should not be approved State ex ref. Missouri Water Co. v. Public Service Commission, 308 S.W. 2d 704 (Mo, 1957).

The Ohio Public Service Commission determined that rates should be flattened to reflect the societal costs as well as utility costs of waste. And, it ordered a reduction to the proposed tariff for minimum users. Re Cleveland Elec. Illuminating Co., 3 P.U.R. 4th 259 (Ohio Pub. Util. Comm'n. 1973).

Michigan's Public Service Commission has said that rates must be designed to promote efficient use of available energy. And, that flatter rates were necessary since they tend to promote the proper use of services. Re Detroit Edison Co., 2 P.U.R. 4th 188, 197-98 (Mich. Pub. Serv. Comm'n. 1973).

The New York Public Service Commission has also recognized the need to discourage wasteful energy consumption by reasoning that customers who place increasing demands on a utility system should be encouraged to restrict usage or be required to pay proportionally higher rates as their usage increases. Re Consolidated Edison Co., 89 P.U.R. 3d 113, 118 (N.Y. Pub. Serv. Comm'n. 1971). In that case, the New York Commission ordered a revision of an electric company's proposed rate schedule to reflect a consumer rationing objective.

Our neighboring Commission in Idaho has ordered that certain promotional rates which did not reflect real costs be discarded. Re Idaho Power Co., 86 P.U.R. 3d 458, 478 (Idaho Pub. Serv. Comm'n. 1970).

The Idaho Public Utilities Commission has also ordered Washington Water Power Co., to flatten its residential electric rates, I.P.U.C. Case No. U-1008-94, Order No. 12069, as has this Commission, In The Matter of the Application of Washington Water Power, Default Order No. 4244. In addition, this Commission has ordered Washington Water Power to submit a schedule flattening its commercial rates the next time it files for a rate increase, but that is not necessary now because of the small number of customers it serves in Montana.

This approach to ratemaking comports with the current tack of Federal agencies in the northwest. The Federal Power Commission, for example, approved the Bonneville Power Administration's (B.P.A.'s) new wholesale rate schedules which "...eliminate promotional features associated with its (B.P.A.'s) prior abundance of power, such as irrigation and developmental discounts." Also approved were B.P.A.'s new rate schedules for firm power and nonfirm energy which "...contain higher charges for the winter peak period than for the summer off-peak period which are presumably related to the costs of supplying electricity during those respective periods." Re Dept. of the Interior, 11 P.U.R. 4th 95, 98 (Fed. Power Comm'n. 1975).

2. The setting of Applicant's rates is "state action" since it is done by a governmental entity of this State, namely this Commission, and as such must conform to due process and equal protection standards of the 14th Amendment of the U.S. Constitution. Haydock, Public Utilities and State Action: The Beginning of Constitional Restraints, 49 Denver L. J. 413 (1973). Ihrke v. Northern States Power Co., 459 F.2d 566 (8th Cir. 1972).

The most recent cases on this include: Holder v. Consumers Power Co., Paragraph 14945 DF, Clearing House Review, (M.D. Mich. 1975) which followed Palmer v. Columbia Gas Co., 342 F. Supp. 241 (N.D. Ohio 1972), aff'g. 479 F.2d 153 (6th Civ. 1973) and distinguished Jackson v. Metropolitan Edison Co., 95 S.Ct. 449 (1974) because there was action by a commission; Condosta v. Vermont Electric Cooperative, Inc., 400 F. Supp. 358 (D. Vt. 1975) which also distinguished Jackson, supra. and found "state action" because in Condosta the utility admitted that it terminated the Plaintiff's electric service pursuant to instructions from the Vermont Public Service Board; and Denver Welfare Rights Organization v Public Utilities Commission of the State of Colorado, Doc. No. 26624, (Colo. Sup. Ct. Mar. 8, 1976) where the Colorado Public Utilities' Commission had adopted a rule regarding service shutoffs which did not provide an absolute right to prior hearing before shutoff. The Colorado Supreme Court said that adoption of the rule was "state action" and therefore protected by the Fourteenth Amendment, but that the amount of due process afforded was sufficient.

3. In a time of rapidly rising energy prices and increasingly severe nationwide energy shortages, any proposed utility rate schedule which is not supported by acceptable cost justification or other demonstratable rational basis to support it should be discarded for a rate schedule which is if not inverted, at least as nearly as is practicable to an equal charge by volume for each volume category of usage within each class of customers. Wesberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

Wesberry and its progeny are reapportionment cases cited here as analogous to establish the principal that equal protection must be had for charges within a customer class unless a demonstrated rational basis for deviating from that is established, and in the absence of that basis for deviating from equality, the equality must be as nearly as is practicable to perfect mathematical equality.

In this case there is a rational basis for going to a flat rate within each class because that kind of a rate will promote more efficient energy usage and energy conservation, whereas the declining tail-block rate structure (as they use more, large users pay less per unit of energy used) tends to encourage more usage of scarce and finite natural resources and tends to create the demand for more utility generating and transmission facilities, which will in turn cause rates to rise.

In reaching these conclusions regarding equity within a class of customers, we must distinguish the question of equity between classes of customers. It should be noted, that low usage customers who have not contributed to the need for new generating and transmission capacity should not be required to bear the burden of significant rate increases. That has been determined to be reason enough for some deviation from requiring a utility's different classes of customers to supply the utility an equal rate of return on the plant allocated to them.

See Apartment Hse. Coun. of Met. W. v. Public Serv. Com'n. of D.C., 332 A.2d 53, 55 (D.C.C.A. 1975) where differentials in the inherent rates of return of 5.63 percent from the residential class, 7.78 percent from the commercial and industrial class, and 8.27 percent from the "high tension" class (customers like the federal government who take electricity at high voltages and transform it with their own equipment) were found to be just, reasonable and non-discriminatory even though the rate increases amounted to 10.4 percent, 15.1 percent, and 22.2 percent from each class respectively. In that case, the general service class (commercial and industrial) absorbed 63.9 percent of the increase, the high tension class 22.2 percent and the residential class 9.2 percent.

4. In ordering these rates flattened, the Commission specifically recognizes that conservation and rate design which encourages conservation are alternatives to the addition of new electric generating capacity. It is essential that utilities not tax consumers' pocketbooks with new plant if the demand for that plant has been created by promotional rate schedules and other rates which do not flatten peak demand. It is also essential that projects like those proposed at Colstrip, with their vast impact on the environment and on Montana's finite coal resources, not be used to sustain demand created by imprudent rate design in Applicant's service areas outside of Montana.

For that reason, the Montana Commission is encouraged to see that the Washington Utilities and Transportation Commission has ordered elimination of block rates in Pacific Power and Light's residential service rate schedule and has ordered flattening of the remaining rate schedules of the applicant. Washington Utilities and Transportation Commission v. Pacific Power and Light Co., Cause No. &-75-24, Second Supplemental Order. Applicant is urged to seek additional elimination of promotional rates and implementation of peak reducing rates and ever-more effective conservation programs in any subsequent filing with this Commission and with any other Commissions in Applicant's service area where Montana resources will be utilized to provide energy.

5. An across-the-board percentage increase in rates does not, in most instances, bring about equitable distribution of increased costs. See Smith v. Public Service Commission, 351 S. W.2d 768 (Mo. 1961) where the Missouri Supreme Court affirmed that state's commission when

it approved a rate design submitted by an electric utility which increased the rates of commercial users by a greater percentage than rates of residential users.

Just as across-the-board percentage increases may not bring about equitable rate distribution, an across-the-board increase by the same monetary amount may not bring about an equitable rate distribution if the old base rate to which that increased monetary amount is applied, is inequitable to start with.

If the old rate which has different charges for different usages has never been justified by a cost of service study, then merely adding the same monetary rate increase to those different charges does not erase existing inequities. And, the utility has the burden of showing that its proposed rate design in its entirety is equitable, just, reasonable, in the public interest and sustainable under the Constitution. See Union Elec. Co., 81 P.U.R. 3d 265, 273 (Mo. Pub. Serv. Comm'n. 1969) where the utility had failed to carry the burden of proof on the rate issue. Also, see Re Cleveland Elec. Illuminating Co., supra.

6. This Commission has a duty under the provisions of the PUBLIC SERVICE COMMISSION Act, R.C.M. 1947, Section 70-101, et. seq., to insure that utilities under its jurisdiction provide reasonably adequate service at just and reasonable rates.

7. The standard "just and reasonable" has been held to be the same as the constitutional standard for public utility rates. F.P.C. v. Natural Gas Pipe Line Co., 315 U.S. 575 (1942) . This standard has been expressed as follows:

> Under the statutory standard of "just and reasonable" it is the result reached and not the method employed which is controlling. It is not the theory but the impact of the rate order which counts....
>
> The rate-making process under the Act (Natural Gas Act) i.e., the fixing of "just and reasonable" rates, involves a balancing of the investor and the consumers interest...The investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated....The return to the equity owner should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital. F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, at 602-603 (1944).

8. In view of the rate of return projected to be received by the Applicant in its proposed test year, increased rates for Applicant's service are justified.

9. The increase approved herein is a just and reasonable amount to insure continued service to Applicant's customers.

10. The rate relief requested by Applicant should be granted in part as reflected by the above findings.

11. The original cost less accumulated depreciation rate base is reasonable and should be used by applicant in the future in submitting applications to this Commission unless ordered otherwise by rule or future rate order. See Section 70-113, R.C.M. 1947. This law as amended by Chapter 115, Laws of Montana, 1975; also applies in this case because the effective date of the Commission's Order comes after the effective date of the law.

The bringing of a suit vests in a party no right to a particular decision, and his case must be determined on the law as it stands not when the suit was brought, but when the judgment is rendered. U.S. v. Heinszen, 206 U.S. 370, 51 L.Ed. 1098, 27 S.Ct. 742 (1907).

If, however, it is determined that the new law does not in fact apply, then the Montana Commission adopts original cost depreciated as the proper measure of so-called "fair value." We note that at least eight states in the past have employed original cost as the measure of fair value. See Rose, The Hope Case and Public Utility Valuation in the States, 54 Colum. L. Rev. 190-212 (1954). And, that a growing number of states, probably in excess of 35, now use original cost as the method of valuing utility rate base.

O R D E R

1. Applicant is allowed to earn the rate of return found reasonable in finding number 15.

2. Applicant is granted an increase in its revenues for electricity delivered of $1,068,000.

3. The Company shall file within 10 days of this order, schedules reflecting the above amount.

4. The residential schedule, Number 7, shall have a $1.50 per month minimum customer charge, and a flat rate for all Kwh's consumed. The other schedules shall contain the minimums and demand charges as proposed by Applicant. They shall also contain a flat rate energy charge for the Kwh's consumed.

5. Rate Schedule 33 shall be eliminated from the Applicant's tariffs and customers served under it shall be billed under the regular general service schedule.

6. Schedules 52, 54, and 57 are accepted as proposed by Applicant.

7. Applicant shall pro-rate to the various classes of customers the remainder of the allowed increase as shown in Column 5, Table 1, of Applicant's Exhibit No. 6.

8. Applicant shall provide this Commission with a load study and a cost of service study based on its actual experience in Montana. Additionally, the water study may be up-dated to a more relevant time period.

9. The new rates and charges shall be effective for services rendered after March 31, 1976.

DONE IN OPEN SESSION at a meeting of the PUBLIC SERVICE COMMISSION held March 3, 1976, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GORDON E. BOLLINGER, Chairman

P. J. GILFEATHER, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

GAIL E. BEHAN
Secretary

(SEAL)

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing within thirty (30) days from the service of this Order, a petition for review pursuant to Section 82-4216, R.C.M. 1947.